

EP DETERMINATIONS QUALITY ASSURANCE BULLETIN

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Request for Technical Advice Memorandum (TAM) And Technical Expedited Advice Memorandum (TEAM)

This bulletin provides instructions for the submission of technical advice requests relating specifically to EP determination applications. This bulletin includes:

Item	Title	Page
I.	Introduction	2
II.	Authority	2
III.	Definitions	2
IV.	When technical advice should be requested	3
V.	Processing steps for requesting technical advice	4
VI.	Administrative control of cases	9
Exhibit A	Form 5565, Request for Technical advice – TE/GE	10
Exhibit B	Letter 1399, Technical Advice Request Notice to Taxpayer	11

I. Introduction

Technical advice requests help Service personnel resolve complex issues and help establish and maintain consistent holdings throughout the Internal Revenue Service. Request for technical advice is encouraged on any technical or procedural questions arising in connection with any case where the issues cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other published precedent.

Revenue Procedure 2004-5, which is revised annually, provides the guidance used by Service personnel to request technical advice. The 2004 version of this Revenue Procedure established significant new processes to be used to request technical advice. These include:

- A new Technical Expedited Advice Memorandum, or TEAM
- Required Pre-submission conference
- Electronic submission of documents
- Eliminated mandatory technical advice requests for “Termination/Reestablishments”
- Expanded the meaning of reconsideration

II. Authority

Rev. Proc. 2004-5 provides the general guidelines for requesting technical advice. Additional guidance can be found in IRM 7.1.5 and IRM 7.11.1.16. These specific procedures for requesting technical advice for Employee Plans Determinations are provided in accordance with IRM 7.1.5.1.1(4).

III. Definitions

“Technical Advice Memorandum (TAM)” means advice or guidance in the form of a memorandum furnished by the Employee Plans headquarters in Washington, D.C. upon the request of an EP Determinations manager, submitted in accordance with the provisions of Rev. Proc. 2004-5 and these instructions, in response to any technical or procedural question that develops during the determination letter process on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices or other precedents published by the headquarters office to a specific set of facts.

“Technical Expedited Advice Memorandum (TEAM)” means technical advice issued in an expedited manner. Subject to an agreement among the taxpayer, the field office, and the headquarters office, any issue eligible for a TAM (other than those enumerated in section 4.04 of Rev. Proc. 2004-5 as mandatory technical advice cases) can be submitted for TEAM treatment. The procedures associated with a TEAM help expedite certain aspects of the TAM process and eliminate some of the requirements that may delay or frustrate the TAM process.

“Mandatory Technical Advice Request” Section 4.04 of Rev. Proc. 2004-5 provides that technical advice must be requested in certain cases. These include:

- (1) requests for § 7805(b) relief
- (2) proposed adverse or proposed revocation letters on collectively-bargained plans,
- (3) plans for which the Service is proposing to issue a revocation letter because of certain fiduciary actions that violate the exclusive benefit rule of § 401(a) of the Code and are subject to Part 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 1974-3 C.B. 1, 43,
- (4) amendments to defined contribution plans pursuant to Rev. Proc. 94-41, 1994-1 C.B. 711, in connection with a waiver of the minimum funding standard and a request for a determination letter (*see* section 15 of Rev. Proc. 2004-6, page 197, this Bulletin, and section 3.04 of Rev. Proc. 94-41), or
- (5) any determination letter case or any examination case involving a plan amendment to convert an existing defined benefit formula to a cash balance type benefit formula that was not previously subject to a TAM on the conversion.

Special note on cash balance plan conversions – The Headquarters field directive dated September 15, 1999 and section 4.04 of Rev. Proc. 2004-5 require mandatory technical advice on all traditional defined benefit plans converted to a cash balance formula unless the conversion was previously subject to technical advice.

On March 24, 2004, the Chief, EP Determinations issued the Cash Balance Conversion Suspense Order. In accordance with the suspense order, these cases should be placed in EDS status 37 (group suspense), and the plan sponsors/POAs should be notified in writing that this has occurred.

EP Determinations will work all of these cases to completion once we receive explicit guidelines on the proper resolution of the cash balance conversion issues and the correct disposition of these cases.

IV. When to Request Technical Advice

A technical advice request will be initiated on all determination letter requests that require mandatory technical advice.

Technical advice should also be requested when there is an unusual or complex issue, or a lack of uniformity regarding the disposition of an issue. Generally, the Service will determine when to request technical advice, but the taxpayer may request that an issue be forwarded for technical advice. The decision on whether or not to seek technical advice must be coordinated through the group manager. Assistance, if necessary, may be obtained by contacting the EP Determinations Quality Assurance Staff (QAS).

V. Processing Steps for Requesting Technical Advice

A. Pre-submission Conference

The pre-submission conference will facilitate agreement between the parties on the appropriate scope of the technical advice request. These conferences are held by telephone with personnel from EP Technical, the originating group, QAS, and the taxpayer, if appropriate. The request will be coordinated through the Manager, EP Determinations Quality Assurance. See section 9 of Rev. Proc. 2004-5 for further details.

A pre-submission conference is mandatory in all cases other than mandatory technical advice requests. During the pre-submission conference, the parties should determine whether the issue or issues are appropriate for a TEAM. The parties should discuss the framing of the issue(s), what background information and documents are required and when the request for a TAM or a TEAM will be submitted. Therefore, once it has been determined that technical advice should be requested, the taxpayer or his/her representative should be advised that technical advice is being considered to resolve the issue(s). The taxpayer or his/her representative should be encouraged to provide the statement in support of their position, and advised of the opportunity to participate in the pre-submission conference. The taxpayer or representative should be referred to Rev. Proc. 2004-5 for additional information.

At this point, an issue statement must be prepared. The issue statement is comprised of:

- specific questions or issues to be addressed by EP Technical
- facts, including specific plan provisions
- any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any other authority supporting the Service's position; and
- arguments in support of the Service's and taxpayer's positions (if known)

If the taxpayer initiates the request for technical advice, the taxpayer must submit to the EP specialist, at the time the taxpayer initiates the request, a written statement—

- stating the facts and the issues;
- explaining the taxpayer's position;
- any relevant statutory provisions, tax treaties, court decisions, regulations, revenue rulings, revenue procedures, notices, or any other authority supporting the taxpayer's position; and
- the reasons for requesting technical advice.

The issue statement will be routed through the group manager and sent to EP Determinations Quality Assurance. The pre-submission conference package will include the following:

- cover memo requesting technical advice pre-submission conference
- draft of issue statement
- Power of Attorney
- taxpayer's written statement (required if the taxpayer initiated the technical advice request)
- additional workpapers or other information that is relevant to the technical advice request should also be submitted.

QAS will then contact EP Technical in writing via e-mail and request a pre-submission conference. A copy of the draft issue statement should be attached to the e-mail. The reviewer should advise EP Technical if the initial request will be a TAM or a TEAM as appropriate. The pre-submission conference will be conducted in accordance with the provisions of Rev. Proc. 2004-5, Sections 9 and 10.

The reviewer assigned the case will arrange the pre-submission conference call and notify all parties involved of the date, time and conference telephone number. The reviewer assigned the case will ensure that the issue statement is submitted to EP Technical at least 10 working days before a TAM or 5 calendar days before a TEAM.

If a TAM is requested – the Headquarters group assigned the case will contact EP Determinations QAS within 5 working days to arrange the conference. The conference is usually held within 30 calendar days. At least 10 working days before the scheduled TAM conference, QAS will submit electronically via e-mail or fax, the following required information:

- issue statement, including any facts in dispute
- any legal analysis, authorities or background documents
- power of attorney, Form 2848, if appropriate

If a TEAM is requested – the Headquarters group assigned the case will contact EP Determinations QAS within 2 working days to arrange the conference. The conference is usually held within 15 calendar days. At least 5 calendar days before the scheduled TEAM conference, QAS will submit electronically via e-mail or fax, the following required information:

- issue statement, including any facts in dispute
- any legal analysis, authorities or background documents
- power of attorney, Form 2848, if appropriate

The legal analysis provided at this point is not required to be fully developed, but should be sufficient to allow Headquarters to become reasonably informed regarding the subject matter of the conference prior to the meeting.

Upon completion of the pre-submission conference, the case will be returned from QAS for issuance of the Letter 1399 and resolution of any other issues identified during pre-submission conference.

B. Taxpayer Notification

Regardless of whether the taxpayer or the Service initiates the request for a TAM or a TEAM, EP Determinations:

- will notify the taxpayer that that technical advice is being requested; and
- at or before the time the request is submitted to EP Technical, will give to the taxpayer a copy of the issue statement being provided to EP Technical in support of its position

Letter 1399 is used for this purpose. This letter should be generated on the EP/EO Determination system (EDS). See Exhibit B.

The taxpayer has 10 calendar days after receiving the statement of facts and specific issues to submit to the specialist a written statement specifying any disagreement on the facts and issues. A taxpayer who needs more than 10 calendar days must justify, in writing, the request for an extension of time in accordance with Rev. Proc. 2004-5, section 11.05.

Discrepancies of facts between the taxpayer and the Service should be reconciled. This is accomplished by means of a “reconciliation memorandum” attached to the original issue statement. The taxpayer is encouraged to submit arguments in support of their position. The taxpayer should also indicate whether or not they desire a conference in the event of an adverse decision. If discrepancies of facts between the taxpayer and the Service cannot be resolved, the procedures outlined in section 11 of Rev. Proc. 2004-5 should be followed.

C. Preparation of Technical Advice Package

After receipt of the taxpayer’s response the EP specialist must prepare the technical advice package. Form 5565, Request for Technical Advice – EP/EO, must be prepared to submit the technical advice request. Form 5565 is the technical advice request form that contains entity information, contact information and index to appropriate attachments. See Exhibit A.

Form 5565 is prepared for the signature of Manager, EP Determinations Quality Assurance. This form should not be dated or signed, as QAS will complete these items. Generally, the statute of limitations need not be protected for determination cases, and this item on Form 5565 should be completed with “N/A.”

The technical advice package should be assembled in the following order:

- Form 5565
- Copy of Form 2848
- Letter 1399 and issue statement (including reconciliation memorandum, if any)
- Taxpayer’s response to Letter 1399
- Copy of the case file tabbed and indexed to Form 5565 – this includes copies of the application, demonstrations, prior determination letters, correspondence, specific plan provisions, plan document or amendment(s), and other relevant information.
- 3 ½ “ floppy disk containing Form 5565 and folders indexed to Form 5565 containing electronic copies of documents

The original documents, including Form 2848, should be retained in the case file. Copies of these documents will be used for the TA package.

It is necessary to prepare an **original and two separate copies** of the TA package. QAS will review the final submission and prepare the technical advice request for transmission to Headquarters. QAS will retain a complete copy of the submission. One copy of the submission will be retained in the case file.

Once the technical advice packages are assembled and tabbed, they should be routed, along with the case file, through the group manager to EP Determinations Quality Assurance for submission of the technical advice request to EP Technical in Washington, D.C.

D. Submission to EP Technical

Upon receipt of the packages QAS will conduct a final technical and procedural review, sign and date Form 5565, and submit the technical advice package to EP Technical. Appropriate items will be transmitted electronically and hardcopies of documents that cannot be electronically transmitted will be express mailed or faxed so as to arrive at Headquarters contemporaneously.

QAS will return the original case file to the originating group for suspense until receipt of a response on the technical advice request.

The technical advice request will be assigned to a tax law specialist (TLS) or actuary in EP Technical. The TLS/Actuary or the group manager will notify the Manager, EP Determinations Quality Assurance and originating EP specialist of the assignment and provide monthly status updates. Usually within 21 days of assignment the TLS will contact the originating group to discuss the procedural and substantive issues in the technical advice request. The originating EP Specialist should notify the QAS technical advice reviewer if this contact has not been made.

E. Response to Technical Advice

Responses to technical advice requests will be sent from EP Technical to the Manager, EP Determinations Quality Assurance. QAS will forward the response to the originating group for processing. QAS will provide necessary processing instructions at that time.

Generally, within 30 calendar days after the date the technical advice memorandum is received from Employee Plans Technical, EP Determinations should either request reconsideration of the technical advice memorandum or furnish a copy of it to the taxpayer.

Subject to a request for reconsideration of the conclusions in a technical advice memorandum, which is described in section 17.02 or Rev. Proc. 2004-5, EP Determinations must follow the conclusions in a technical advice memorandum as to all issues. In addition, the Appeals Area Director must follow the conclusions in a technical advice memorandum on issues of a plan's status or qualification. Thus, if the technical advice memorandum received by EP Determinations concerns a plan's status or qualification, the plan has no appeal to the appeals office on those specific issues. Refer to Revenue Procedure 2004-5, section 17.01.

Technical advice memoranda involving criminal or civil fraud investigations or a jeopardy or termination assessment are not furnished to the taxpayer. Also, where no definitive answer is given to the specific question presented or where the factual submission is such as to indicate that the issue should be decided by EP Determinations, a copy of the technical advice memorandum will not be furnished to the taxpayer. Employee Plans Technical will specifically give advice on such matters.

The transmittal memorandum, which is sent with the technical advice memorandum, is never to be released to the taxpayer.

If there is a question involving the meaning or interpretation of a technical advice memorandum, the Manager of EP Determinations QAS will contact the Group Manager at Employee Plans Technical responsible for the memorandum and discuss the concerns in an attempt to resolve them.

F. Disclosure

IRC 6104(b) provides in part, that determination letter applications with respect to plan qualification are open to public inspection if the plan has more than 25 participants. This includes the application and any papers submitted in support of the application as well as any letter or other document issued by the Internal Revenue Service. For plans with fewer than 26 participants, only plan participants and/or their authorized representatives may inspect the application and related documents.

When technical advice is returned from EP Technical, the cover letter will instruct EP Determinations on what to provide the taxpayer depending on the number of plan participants. The cover letter will not be provided to the taxpayer.

VI. Administrative Control of Cases

Inventory control of technical advice cases is facilitated through EDS. The following steps must be followed:

- When a technical advice case is ready for pre-issuance review the case should be updated to status 41, “proposed technical advice.”
- EDS should automatically update the status to 55, “awaiting managerial approval.”
- The case should then be routed to the group manager. *After managerial approval, an “x” should be entered on the EDS approval screen to update the status of the case to 31, “in review”, and forward the case to QAS for review. **THIS IS VERY IMPORTANT!***
- After the pre-submission conference is completed, QAS will update the status to 32, “returned on review memo”, and return the case to the group to issue the 1399 letter.
- When the case is ready for final submission it should again be closed using status code 41, which will automatically update to status 55.
- Route to the group manager for approval and again update the status to 31 by placing an “x” on the approval screen, and return to QAS for final submission.
- QAS will update the status code to 56, “technical advice transfer (suspense)”, after the technical advice request has been forwarded to EP Technical.
- QAS will update the case to status code 58 and return the case file to the originating specialist. The returned case should be updated to status code 37, group suspense until the technical advice is issued. The originating specialist will continue to reflect the case in their inventory and should annotate “technical advice suspense” on his/her time sheet.
- When the technical advice is received from Headquarters, it will be forwarded to the originating group by QAS with processing instructions.

NOTE: If problems are encountered with EDS status code 41 please contact QAS for further instructions.

Exhibit A Request for Technical Advice - TE/GE					(Check one) ____ EP Determination ____ EP Examination					
1. TO: (Check one) Internal Revenue Service EP Technical _____ Washington, D.C. 20224 EP Actuarial _____				2. Special Handling? Yes: ____ No: ____ If "yes," attach memo (see instructions)		3. Date of Request		4. Mandatory Tech-Advice? Yes: ____ No: ____		
5. (a) From: Gary Runge (513) 263-3553				(c) TE/GE Office/Appeals Office Location Cincinnati, OH		6. Principal Code Section 401(a) (or as applicable)				
(b) Signature				(d) Title: Manager, EP Determinations Quality Assurance Staff		7. Year(s) Involved				
8. (a) Name and Telephone Number of TE/GE or Appeals Office Contact (Insert Agent's Name) (xxx) xxx-xxxx						9.(a) Statute Expires				
(b) Name and Telephone Number of EP Area Manager, EO Area Manager or Associate Chief, Appeals Office or Manager, Examination Function (Insert AM Name), EP Area Manager, (Insert Name of Area here) (xxx) xxx-xxxx						(b) 270 Day Period Expires				
10. Name and Address of Taxpayer or Organization						11. Identification No. (EIN or SSN)				
12 (a) Name and Address of Representative (as stated on Power of Attorney/ Declaration)					(b) Area Code and Telephone Number of Representative					
Case Information		Check one			Exhibit no. of attachment	Case Information		Check one		
		Yes	No	N/A				Yes	No	N/A
13. General Information:						(b) Is revocation or modification of a ruling or determination letter involved? If "yes," enter the recommended effective date of revocation or modification and attach a statement containing the reasons for such date. (Date)				
(a) Was a Power of Attorney or Declaration provided? If "yes," please attach a copy.....						15. Previous				
(b) Was the taxpayer informed Technical Advice is being requested and did you explain the procedures? If "no," please attach a statement containing the reason.....						Is the same issue involved in a prior case? If "yes," attach a statement explaining the disposition, including whether there was a prior revocation or disqualification.....				
(c) Does the taxpayer desire a conference with EP Technical or EO Technical if an adverse decision is indicated?.						16. Employee Plans Cases				
(d) Did you give the taxpayer a statement of facts and questions as your office sees them? If "yes," please attach a copy. If "no," please attach a statement containing the reasons....						(a) Have you attached the administrative file and, if the request involved examination cases, attached the examination information folder (copies of returns, workpapers, supporting schedules, and actuarial reports)?				
(e) Does the taxpayer agree with the statement? If "no," please attach the taxpayer's statement of facts and questions.....						(b) Is any issue pending before DOL or PBGC? If "yes," attach a statement containing the issue involved and other relevant information.....				
(f) Has the taxpayer submitted a protest, brief, response, or other information. If "yes," please attach a copy.....						(c) If an EP examination case, has DOL been notified pursuant to the IRS-DOL Coordinated Agreement?.....				
(g) Have you prepared a statement of applicable law, argument, and conclusion? If "yes," please attach a copy.....						(d) If item 16(c) is "yes," has DOL commenced an examination?.....				
(h) If subject to section 6110, did you ask for a statement of proposed deletions? If "yes," please attach a copy.....						17. Exempt Organization Cases:				
(i) Is there a pending technical advice request regarding the same taxpayer or organization? If "yes," please attach an Explanation.....						(a) Have you attached the case file (copies of enabling instruments, etc.)?				
						(b) Is the organization a private foundation?.....				
14. Ruling or Determination Letter:						18. LMSB, SB/SE or W&I Cases:				
(a) Does a prior letter relate to issues in this case? If "yes," attach a copy.....						Have you attached relevant workpapers and documents?.....				

Exhibit 7.13.5-21 (04-01-2003)

Letter 1399 (DO/CG)

Technical Advice Request Notice to Taxpayer

EDS Paragraph Numbers	Text
	Employer Identification Number:
	DLN:
	Person to Contact:
	ID#:
	Contact Telephone Number:
	Plan Name:
	Plan Number:
	[Salutation]
1 (Automatic)	We are going to request technical advice from our Washington D.C. Office about your employee benefit plan.
2 (Automatic)	Enclosed is a statement of the pertinent facts and questions we propose to send to the Washington D.C. Office. If you disagree with the facts as stated, explain your disagreement in writing. We will send your comments to the Washington D.C. Office with our request for technical advice.
3 (Selective)	The Internal Revenue Code requires the IRS to delete certain data from technical advice memoranda that are subject to disclosure under section 6110(a) of the Internal Revenue Code. When we send requests for technical advice, we must include either (1) a statement of the deletions the taxpayer proposes and the statutory basis for each proposed deletion, or (2) a statement that the only information that needs to be deleted is the names, addresses, and taxpayer identifying numbers. Please send us your statement of proposed deletions on a separate sheet so we can include it with our request.
4 (Selective)	Your request will be open to public inspection because it relates to the qualification of a plan or the tax exemption of the related trust (section 6104 of the Internal Revenue Code). If we need a statement about deletions, we will request it later.
5 (Automatic)	You are entitled to a conference in the Washington D.C. Office if the decision is adverse. Please let us know whether you want such a conference.

Exhibit 7.13.5-21 (Cont. 1) (04-01-2003)**Letter 1399 (DO/CG)****Technical Advice Request Notice to Taxpayer**

3000–3999 (Selective)	Please mail the information requested in this letter to the following address: (Addresses and instructions for use of these paragraphs to be provided by the EP-DCSC Office).
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5998 (Selective)	We have sent a copy of this letter to your representative as indicated in your Power of Attorney.
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5999 (Automatic)	If you have any questions, please contact the person whose name and telephone number are shown above. Sincerely yours,
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8500 (Automatic)	Paul T. Shultz Director, Employee Plans Rulings & Agreements
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8000 (Required)	Refer Reply to: [20V]
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8001 (Required)	Required Response Date: [20V]
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8501 (Automatic)	Enclosures: Statement of Facts and Questions Copy of this letter
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